

JERALD A. WATERS

IBLA 86-1037

Decided October 23, 1986

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying petition for Class I reinstatement. ES 32674.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to make a Class I reinstatement of a terminated oil and gas lease where the rental payment is not paid or tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Payments: Generally--Words and Phrases

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment within the meaning of 43 CFR 3108.2-2(a)(1). A tender of rental payment is made only when payment is received by the proper office administering the lease, providing that office the opportunity either to accept or decline payment. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for a Class I reinstatement of an oil and gas lease.

APPEARANCES: Jerald A. Waters, pro se; Mary Katherine Ishee, Esq., Office of the Solicitor, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Jerald A. Waters has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated March 12, 1986, denying his petition for Class I reinstatement of oil and gas lease ES 32674. BLM's decision notes that lease ES 32674 terminated automatically by operation of law on February 1, 1985, 1/ upon appellant's failure to pay annual rental on or before the anniversary date of the lease.

In his reinstatement petition, Waters states that he mailed his rental payment for lease ES 32674 on December 7, 1984. Affidavits of his comptroller and bookkeeper and entries from the check register and mail log are submitted by appellant in support of this contention. Appellant acknowledges, however, that the Minerals Management Service (MMS) never received this rental payment (check 3947) and that his check was apparently lost in the mail. Concerned that his check had not cleared, Waters states that he contacted BLM in February 1985 and was informed that no payment had been received for lease ES 32674. Waters further states that he was told by BLM to send a replacement check and that this would be sufficient to keep his lease in effect. To this end, Waters drew check 797 on February 19, 1985, to the order of MMS which check, BLM contends, was received by it on February 27, 1985.

[1] Under the terms of 30 U.S.C. § 188(b) (1982), an oil and gas lease covering lands upon which there is no well capable of producing oil or gas in paying quantities terminates automatically by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Because the rental payment on lease ES 32674 was not received on or before January 1, 1985, the lease terminated automatically as of that date. 43 CFR 3108.2-1.

A lease that has terminated for failure to timely pay the full amount of rental due may, however, be reinstated under 30 U.S.C. § 188(c) (1982) if the following requirements for a Class I reinstatement, set forth at 43 CFR 3108.2-2, are met:

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

1/ This date should read Jan. 1, 1985. As explained infra, lease ES 32674 terminated on Jan. 1 because lease ES 32674 took effect as of Jan. 1, 1984.

(3) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental. [Emphasis added.]

[2] Though the pleadings reveal that appellant mailed his rental payment on December 7, 1984, such rental was neither "paid" nor "tendered" by such action within the meaning of 43 CFR 3108.2-2(a)(1). Payment was not accomplished by the mailing on December 7 because the Department has never received the funds represented by check 3947, nor apparently has this check cleared appellant's bank. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. Buttes Resources Co., 72 IBLA 18, 19 (1983). The Department has long held that placing a check for rental in the mail does not constitute tender of a lease rental. Until the proper office has had the opportunity to receive or decline the rental check, no tender has occurred. William E. Phalen, 85 IBLA 151, 153 (1985); Mobil Oil Corp., 35 IBLA 265, 268 (1978).

The uncontested facts set forth supra reveal that BLM received the rental for lease ES 32674 on February 27, 1985, 37 days after the period authorized by 43 CFR 3108.2-2(a)(1) had expired. Appellant's failure to satisfy the requirements of 43 CFR 3108.2-2(a)(1) makes unnecessary our further consideration of the requirements of that regulation. BLM's decision of March 12, 1986, is, accordingly, affirmed as modified. 2/

During the pendency of this appeal, appellant filed a petition for Class II reinstatement with BLM under 30 U.S.C. § 188(d) (1982) and 43 CFR 3108.2-3. 3/ Our decision above takes no position on this petition and BLM is hereby directed to consider this petition upon our return of this case file.

2/ A number of inaccuracies in the BLM decision of Mar. 12, 1986, make it necessary to qualify our affirmance. As noted by counsel for BLM, the decision mistakenly states that BLM received the instant petition for reinstatement on Feb. 11, 1985. This date should be Feb. 11, 1986. Regulation 43 CFR 3108.2-2 requires such a petition to be filed within 60 days of receipt of a Notice of Termination of Lease from BLM, not 15 days, as set forth in the decision. Finally, the petition may be denied for the reasons set forth in the text above and not, as the decision states, because of any nonpayment of rent due Jan. 1, 1986.

3/ The petition was forwarded to the Board by BLM and received Aug. 14, 1986. On Aug. 27, 1986, BLM filed a motion which stated it did not intend that the Board adjudicate the petition and requested "an order recognizing BLM's jurisdiction to adjudicate the Class II petition, by remand of the case to the BLM" so BLM could issue a decision on the petition.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed as modified.

John H. Kelly
Administrative Judge

We concur:
C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

